

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEON SCOTT,

Petitioner,

- against -

05 Cv. 6097 (CLB)
[03 Cr. 473 (CLB)]

UNITED STATES OF AMERICA,

Memorandum and Order

Respondent.

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Brieant, J.

By his *Pro se* Petition received by the Pro Se attorney on June 27, 2005 and docketed June 30, 2005, Mr. Leon Scott, a federal prisoner, seeks relief pursuant to 28 U.S.C. § 2255, from his felony conviction in this Court.

Mr. Scott was convicted of federal felonies in this Court on October 16, 2003 on his plea of guilty. The Judgment became final ten (10) days thereafter. No direct appeal was taken. By his Petition, Mr. Scott now seeks to invoke the rule of *Booker/Fanfan*, issued by the Supreme Court on January 12, 2005. The claim is asserted under the talismanic rubric of “ineffective assistance of counsel” in that his attorney did not anticipate *Booker/Fanfan*, or the prior decisions in *Apprendi*, *Blakely* and *Dodd*. He complains additionally that drug quantities in possession of his co-defendant and co-conspirator were attributed to him under then mandatory Sentencing Guidelines.

Of the cases cited, only *Booker* and *Fanfan* apply to the federal courts. Our Court of

Appeals has held in *Guzman v. United States*, 139 F. 3d 139, 144 (2d Cir. 2005) that these decisions are not retroactive, and thus do not apply to cases on collateral review, such as this one, where the Defendant's conviction was final as of January 12, 2005. Failure to anticipate *Booker* in 2003, cannot arise to the level of inadequate lawyering.

While this Court sympathizes with Petitioner and the rest of the vast multitude of persons sentenced during more than a decade under a mandatory Guidelines regime which the Supreme Court endorsed more than once, oblivious to what a majority of the Court belatedly discovered to be unconstitutional, this Petition must be, and it is, dismissed prior to answer, under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts because the Petition is not entitled to relief.

Petition or Motion denied.

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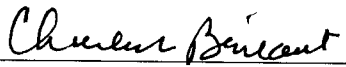
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SO ORDERED.

Dated: White Plains, New York
July 13, 2005



Charles L. Brieant, U.S.D.J.